Supreme Court, U.S.
FILED

No. 97-2075 MAR 19 1998

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

RANDOLPH E. GREEN
MELBA L. GREEN
CRAIG A. GREEN

PETITIONERS

V.

THE CITY OF BOSTON, ET AL

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI FOR COMPELLING REASONS PURSUANT TO RULE 10 OF THE SUPREME COURT

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In Proper Person
Pro se

31 pp

QUESTION PRESENTED

1. Whether, we, the Black Plaintiff-Appellant Petitioners have the same equal rights under the law to the full and equal benefit of all laws and proceedings for the scrutiny of persons and property as is enjoyed by White citizens pursuant to the 1964 Federal Civil Rights title 42 USC Section 1981 which is an act of Congress.

2. Whether the United States Federal District Court Judge has used racial bias, racial prejudice, racial discrimination, conspiracy and denial of due process against us, the minority Petitioners Et al when the court withheld a ruling on Petitioners' motion to vacate the Respondents' motion to dismiss Petitioners motion that was pending in court for over a year and five months, and no ruling nor no action was taken by the court judge on Petitioners' two motions; motion to vacate and motion for judgment.

3. Whether, we, the Petitioners Et al won civil action no. 96 10048 on May 28, 1996, when the Respondents Et al were defaulted on May 28, 1996 by the Court and the Clerk of Court – Robert J. Smith Et al for failure to have answered the complaint within twenty (20) days from the day of service of the summons and complaint was served upon the Respondents Et al, entered on the docket.

4. Whether we, the Petitioners, Randolph E. Green, Melba L. Green and Craig A. Green, won case no. 96 10048, GAO by default on May 28, 1996 when the court entered on May 28, 1996 the default against the Respondents Et al, who used over one

hundred (100) days and failed to answer the complaint as a matter of law.

5. Whether the United States District Court has used the power of the Court as an insulation instrument against the Black Petitioners Et al for circumventing and withholding acting or ruling on the Black Petitioners Et al's motion for an order of judgment against the Respondents Et al, who defaulted on May 28, 1996 for failure to have answered the complaint.

6. Whether the United States District Court Judge has used the power of the Court as an insulation instrument against the Black Petitioners Et al for circumventing and withholding acting or ruling on Petitioners Et al's motion to vacate the Respondents Et al's motion to dismiss.

7. Whether the United States Federal District Court Judge has used a discriminatory treatment of racial discrimination against the minority Petitioners Et al by the Court withholding and refusing to have ruled on the minority Petitioners Et al's motion for an order of judgment against the Respondents – City of Boston – Et al.

8. Whether the United States Federal District court has used a denial of due process of the equal protection justifiable constitutional rights against the minority Petitioners Et al, when the Court Judge in Civil Action no. 96 10048, has withheld and refused to rule on the minority Petitioners Et al's motions as was enjoyed by the White Respondents Et al's two motions ruled on by the Court Judge in Civil Action on 96 10048 – GAO.

9. Whether the United States Federal District Court Judge has used the power of the Court as an

insulation instrument against the minority Petitioners Et al, for circumventing a federally protected right, 364 US at 347.

10. Whether the docket entries will verify and clearly show racial discrimination by withholding and deprivation of Petitioners' civil rights and all others.

11. Whether the docket entries will clearly show that the United State Federal District Court Judge Et al's disregard ruling on or acting on the Minority Petitioners' two motions – motion to vacate the Respondents Et al's motion to dismiss and Petitioners Et al's motion for a judgment against the Respondents. Whether the court used a political, racial discriminatory treatment violation of the Minority Petitioners' constitutional rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

12. Whether, we, the Minority Petitioners Case No. 10048-GAO were extended the judicial power by the court when the Court Judge refused and withheld due process ruling on Petitioners Et al's two motions for over a year and never acted upon nor ruled on Petitioners' said two motions – Article 111, Section 2(1) – the judicial power shall extend to all cases in law and equity, arising under the Constitutional Laws of the United States.

13. Whether the United States Federal District Court Judge use or made a difference in ruling for the Negro Petitioners Et al, than for the Whites. The White Respondents, City of Boston, Et al, when the Court Judge ruled on a the White Respondents Et al's motions and refused and withheld ruling on al of the Minority Petitioners Et al's motions as were enjoyed by the White Respondents Et al.

14. Whether the United States Federal District Court Judge and the United States Federal Court of Appeal's three-judge panel has damaged and has injured and has deprived the Minority Petitioners Et al of our due process rights and privileges to a judgment against the White Respondents – City of Boston, Et al for the Minority Petitioners Et al have made a financial settlement for default with the White Respondents – City of Boston, Et al.

15. Whether the Court's' four judges have discriminated against us, the Black Petitioners by withholding ruling from Petitioners, pursuant to Title 42 USC Sec. 2000,etc.

16. Whether the United States Federal District Court Judge and the United States Federal Court of Appeal's three-judge panel has damaged and has injured and has deprived the Minority Petitioners Et al of our due process rights and privileges to a judgment against the White Respondents – City of Boston, Et al for the Minority Petitioners Et al have made a financial settlement for default with the White Respondents – City of Boston, Et al.

17. Whether the Court's' four judges have discriminated against us, the Black Petitioners by withholding ruling from Petitioners, pursuant to Title 42 USC Sec. 2000,etc.

18. Whether the Court's four judges have violated the Black Petitioners' constitutional rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

19. Whether we, the Petitioners, have been deprived of the equal rights under the law by the Courts refusing to proceed on a procedural due process rights course of action on all Petitioners' motions

as was enjoyed by the White Respondents where the court proceeded on a procedural due process right course of action and ruled on all of the Respondents' motions filed in Civil Action No. 96-0048.

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Strauder v. West Virginia, W.VA 1879, 100 U.S. 303, 10 Ott 303 25 L.Ed. 664.

Williams v. San Francisco Unified School District D.C. Col. 1972, 340 F. Supp. 438.

Smith v. Jennings, D. C. Mich. 1957, 148 F. Supp. 641.

Fitzgerald v. Hampton, 1972, 467 F. 2d 755.

Brown v. U.S. District Court Tex. 1974, 377 F. Supp. 530.

Berends v. Butz, District Court Minn. 1973, 3757 F. Supp. 143.

Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Tynes v. U.S., 314 App. D.C., 224 App. D. C. 1904.

Budd v. Commissioner Internal Revenue 43 F. 2d. 509 C.C.A. 1930.

Russell v. Clarke's Exns. 11 U.S. 697 Cranch 69, 3 . Ed. 271.

CONSTRUCTION

That the United States Federal District Court and the United States Federal Court of Appeal for the First Circuit are establishments of the Federal Government of the United States of America, and that we, the Black/Minority Petitioners Et al have been discriminated against by and in the District Court establishment pace and by and in the Appeal Court establishment place, when the courts Et al used the judicial power against the Black/Minority Petitioners Et al as an insulation instrument for circumventing affording we, the Black/Minority Petitioners Et al, fairness of procedures, due process, and basic due process of we, the Black/Minority Petitioners Et al's two (2) motions – motion to vacate etc. and motion for judgment etc. against the White Respondents – City of Boston Et al, who were defaulted on May 24, 1996 for failure to have answered Petitioners Et al's complaint within twenty (20) days and with over one hundred (100) days and did not answer.

We the Black/Minority Petitioners Et al have been denied the equal protection of the laws, according to us, the Black/Minority Petitioners Et al by the Fourteenth Amendment to the Constitution of the United States of America by the United States Federal District Court Establishment place by virtue of the debasement of we, the Black/Minority Petitioners Et al's two (2) motions filed in court establishment place.

This subchapter is not to be narrowly interpreted. Valle v. Stengel C.A.N.J. 1940, 176 F.2d 697.

Constitutional amendments and federal statues dealing with race or color have been interpreted and applied not to discriminate in favor of Negroes but to prevent discrimination against them, not to make, but to prevent a different rule for Negroes than for whites. Hampton v. Thompson, C.A. Tex. 1949, 171 F.2d 535.

Baker v. Carr

Mr. Justice Brennan delivered the opinion of the Court.

This civil action was brought under 42 USC §§ 1983 and 1988 to redress the alleged deprivation of federal constitutional rights. The complaint, alleging that by means of a 1901 statute of Tennessee apportioning the members of the Genera Assembly among the State's 95 counties, "these plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes," was dismissed by a three-judge court convened under 28 USC § 2281 in the Middle District of Tennessee. The court held that it lacked jurisdiction of the subject matter and also that no claim was stated upon which relief could be granted. 179 F.Supp. 824. We noted probable jurisdiction of the appeal, 364 US 898. We hold that the dismissal was error and remand the cause to the District court for trial and further proceedings consistent with this opinion.

"When a State exercised power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right." 364 US at 347.

We conclude that he complaint's allegations of a denial of equal protection present a justifiable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.

The judgment of the District court is reversed and the cause is remanded for further proceedings consistent with this opinion.

Reversed and remanded.

Mr. Justice Whittaker did not participate in the decision of this case.

Mr. Justice Douglas, concurring.

While I join the opinion of the court, and like the Court, do not reach the merits, a word of explanation is necessary.

The United States Federal District Court Judge, George O'Toole; and the United States Federal Court of Appeals for the First Circuit Judge Torruella, Chief Circuit Judges Stahl and Lynch have used being biased and prejudiced against the Black Petitioners Et al's and has violated Petitioners Et al's civil rights under the 1964 civil rights act Title 42 USC, Sec. 1981, equal rights

under the law; and Title 42 USC, Sec. 2000a-2 provides that no one shall withhold, deny or attempt to withhold or deny or deprive or attempt to deprive any person of any rights or privileges secured by section 2000a or 2000a-1 and other by using the power of the U.S. Federal Court of Appeal and the power of the U.S. Federal District Court as an insulation instrument against we, the Black Petitioners Et al, for circumventing, acting on or ruling on Black Petitioners Et al's two motions as was enjoyed by the White Respondents Et al.

> **Title 42 U.S.C. §1981. Equal rights under the law.**
>
> All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

The United States Federal District Court judge for the District Court, and the United States Court of Appeal's three judge panel for the First Circuit has deprived and violated the Black Petitioners Et al of our civil rights and federally protected procedure due process rights by using the power of the courts as an insulation instrument against us, the Black Petitioners. For circumventing, acting on or ruling on Black Petitioners' two motions as was enjoyed by White citizens, the White Respondents, where the courts ruled or acted on the White Respondents' motion to dismiss and totally disregarded Petitioners Et al's motion to vacate the Respondents Et al's motion to dismiss and Black Petitioners' motion for judgment against the Respondents Et al's for default. When the Respondents Et al were defaulted for failure to answer Petitioners Et

al's complaint within twenty (20) days; and they filed their motion to dismiss one hundred (100) days late and were defaulted by the court. The court refused to have acted or ruled on said two motions.

42 USC §2000a-2

> Provides that no person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by §§2000a or 2000a-1, or (b) intimidate, threaten, or coerce or attempt to intimidate, threaten or coerce any person with the purpose of interfering with any right or privilege secured by §§2000a or 2000a-1, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by §§2000a or 2000a-1.

If it pleases the United States Supreme Court, Petition for Writ of Certiorari to the Unites States Court of Appeal for the First Circuit is for a Compelling Reason, pursuant to Rue 10 of the Supreme Court is filed in Good Faith. Part 111 Jurisdiction on Writ of Certiorari.

JURISDICITION

Jurisdiction for the Writs of Certiorari is pursuant to Part 111(3); Review on Writs of Certiorari is cited pursuant to Rule 10 for compelling reason.

CONCLUSION

In conclusion, we, the Petitioners Et al, pray that the United States Supreme Court Justices will rule in favor of we, the Black/Minority Petitioners Et al on grounds clearly shown by the docket entries that the United States Federal District Court and the United States Federal Court of Appeal has denied us, the

Black/Minority Petitioners Et al equal justice protection of the law, and the due process of the law, and the deprivation of Petitioners' rights and privileges secured by Title 42 USC Section §1981 and Section §§2000a or 2000a-1, and violation of Petitioners' Constitutional Rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States of America. Because we, the Black Petitioners Et al received a valid default against the White Respondents Et al and it will clearly show the main reason as to why the United States Federal District Court and the United States Federal Court of Appeal establishments places a different rule against us, the Black Petitioners Et al than that was used and enjoyed by the White Respondents Et al so as to try and save White Respondents Et al from having been defaulted. Please see docket entries as evidence.

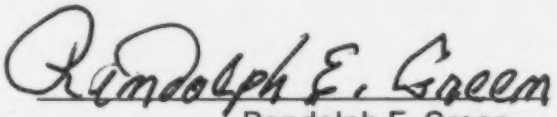
Statement of The Case

The Respondents seized Petitioners' said real property at 32 Alaska Street – Roxbury, Massachusetts 02119 before and without having served the Petitioners Et al with a summons and complaint, and before and without a notice and hearing in court and for violation of Petitioners Et al's due process right and Petitioners civil rights and violation of Petitioners Et al's Constitutional Rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Reason for Granting

We, the Black/Minority Petitioners Et al reason for granting is that the White Respondents Et al were defaulted for failure to have answered Petitioners Et Al's complaint within twenty days after the service of the summons and complaints were served upon Respondents Et Al and that the United States Federal District Judge and the United States Federal Court of Appeal's Judges discriminated against the

Black/Minority Petitioners Et al by treating us differently from that which was enjoyed by the White Respondents Et Al involving we Black Petitioners Et Al's two motions and the White Respondents' two motions by racial discrimination.



Randolph E. Green
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Roxbury, Massachusetts 02119
617/ 445-6488

Gerald Fabiano,
Attorney for the Respondents
[COR LD NTC]
The City of Boston Law Department
City Hall
Boston, Massachusetts 02201
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APPEAL

U.S. DISTRICT COURT
U.S. District Court – Massachusetts (Boston)

CIVIL DOCKET FOR CASE #: 96-CV-10048

Green, Et al v. City of Boston, et al
Assigned to: Judge George A. O'Toole
Demand: $100,000.
Lead Docket: None
Docket # in other court: None

Filed: 01/10/96
Jury Demand: Plaintiff
Nature of Suit: 440
Jurisdiction: Federal Question

Cause: 28:1983 Civil Rights

RANDOLPH E. GREEN
Plaintiff

Randolph E. Green
[COR LD NTC] [PRO SE]
8 Woodbine Street
Roxbury, MA 02119
617-445-6488

MELBA L. GREEN
Plaintiff

Melba L. Green
[COR LD NTC] [PRO SE]
8 Woodbine Street
Roxbury, MA 02119
617-445-6488

CRAIG A. GREEN
Plaintiff

V.

THE CITY OF BOSTON, Its Agents And Employees
Defendant

Gerald Fabiano
617-635-4041
[COR LD NTC]
City of Boston Law Dept.
City Hall
Boston, MA 02201

617-635-4040

THOMAS M. MENINO, Mayor, Mayor, City of Boston Defendant	Gerald Fabiano (SEE ABOVE) [COR LD NTC]
PUBLIC FACILITIES DEPARTMENT Defendant	Gerald Fabiano (SEE ABOVE) [COR LD NTC]
CHARLES GRISBY, Director Defendant	Gerald Fabiano (SEE ABOVE) [COR LD NTC]
BARBARA J. SALFITY, Deputy Director Defendant	Gerald Fabiano (SEE ABOVE) [COR LD NTC]
DIANNE MARCHIONO, Property Manager, Inspectional Service Department Defendant	Gerald Fabiano (SEE ABOVE) [COR LD NTC]
JOHN EADE, Commissioner Defendant	Gerald Fabiano (SEE ABOVE) [COR LD NTC]
RICHARD BEAULIEU, Principal Housing Inspector Defendant	Gerald Fabiano (SEE ABOVE) [COR LD NTC]

1/10/96	**1**	Complaint filed. Case assigned to Judge O'Toole. Receipt #: 113504 Amount: $. (jmr) [Entry date: 01/19/96]
1/10/96	–	Summons issued for City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity,

Dianne Marchiono, John Eade, Richard Beaulieu (jmr) [Entry date: 01/19/96]

1/13/96	**3**	Motion by Randolph E. Green, Melba . Green, Craig A Green for Class Certification filed. (lau) [Entry date 1/24/96]
1/23/96	**2**	Amended complaint by Randolph E. Green, Melba L. Green, Craig A. Green filed. (Answer due 2/2/96 for Richard Beaulieu, for John Eade, for Dianne Marchiono, for Barbara J. Salfity, for Charles T. Grisby, for Public Facilities, for Thomas M. Menino, for City of Boston). Amended complaint amends [1-1] complaint. (lau) [Entry date: 1/24/96]
1/12/96	**4**	Response by City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu in opposition to [3-1] motion for Class Certification, filed. (lau)
1/20/96	**–**	Judge George A. O'Toole, Jr., Endorsed Order entered denying [3-1] motion for Class Certification. Review of the complaint as amended discloses no basis for clarifying a class under Rule 23. None of the conditions in Rule 23 (a) or (b) exist. The motion is accordingly DENIED. Entered cc/cl (lau) [Entry date: 2/22/96]
1/22/96	**5**	Return of service executed as to Charles T. Grisby with service on 1/11/96 filed. Answer due on 1/31/96 for Charles T. Grisby (lau) [Entry date: 2/23/96]

1/22/96	**6**	Return of service executed as to Barbara J. Salfity with service on 1/11/96 filed. Answer due on 1/31/96 for Barbara J. Salfity (lau) [Entry date: 2/23/96]
1/22/96	**7**	Return of service executed as to Dianne Marchiono with service on 1/11/96 filed. Answer due on 1/31/96 for Dianne Marchiono (lau) [Entry date: 2/23/96]
1/22/96	**8**	Return of service executed as to Public Facilities with service on 1/11/96 filed. Answer due on 1/31/96 for Public Facilities (lau) [Entry date: 2/23/96]
1/22/96	**9**	Return of service executed as to Richard Beaulieu with service on 1/11/96 filed. Answer due on 1/31/96 for Richard Beaulieu (lau) [Entry date: 2/23/96]
1/22/96	**10**	Return of service executed as to John Eade with service on 1/11/96 filed. Answer due on 1/31/96 for John Eade (lau) [Entry date: 2/23/96]
1/22/96	**11**	Return of service executed as to Inspectional Services Department with service on 1/18/96 filed. Answer due on 2/2/96 for Inspectional Services Department (lau) [Entry date: 2/23/96]
1/22/96	**12**	Return of service executed as to Thomas M. Menino with service on 1/11/96 filed. Answer due on 1/31/96 for Thomas M. Menino (lau) [Entry date: 2/23/96]

1/22/96	**13**	Return of service executed as to City of Boston with service on 1/11/96 filed. Answer due on 1/31/96 for City of Boston (lau) [Entry date: 2/23/96]
1/17/96	**16**	Motion by Randolph E. Green, Melba L. Green, Craig A. Green for entry of default as to City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu, filed (lau) [Entry date: 5/22/96]
1/17/96	**17**	Affidavit of Randolph E. Green, re: [16-1] motion for entry of default as to City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu, filed (lau) [Entry date: 5/22/96]
1/20/96	**14**	Motion by City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu, filed. (lau) [Entry date 5/21/96]
1/20/96	**15**	Memorandum by City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu to dismiss, filed (lau) [Entry date: 5/21/96]
1/28/96	**–**	Judge George A. O'Toole, Jr., Endorsed Order entered granting [16-1] motion for entry of default as to City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity,

Dianne Marchiono, John Eade, Richard Beaulieu. (lau)

1/28/96	**18**	Notice of Default as to City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu issued. (lau)
1/28/96	**19**	Motion of Randolph E. Green, Melba L. Green, Craig A. Green to vacate defendants' motion to dismiss by demand pursuant to Rule 4(a), failed to appear and defend the complaint within 20 days, filed. (lau) [Entry date: 5/22/96]
5/28/96	**20**	Affidavit of Randolph E. Green, re: [19-1] motion to vacate defendants' motion to dismiss by demand pursuant to Rule 4(a), failed to appear and defend the complaint within 20 days, filed. (lau) [Entry date: 5/29/96]
5/31/96	**21**	Motion by City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu to set aside default, filed. (lau) [Entry date: 6/4/96]
5/31/96	**22**	Response by City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu in opposition to [19-1] motion to vacate defendants' motion to dismiss by demand pursuant to Rule 4(a), failed to appear and defend the complaint within 20 days, filed (lau) [Entry date: 6/4/96]

6/7/96	**23**	Response by Randolph E. Green, Melba L. Green, Craig A. Green in opposition to [21-1] motion to set aside default, filed. (lau) [Entry date: 6/10/96]
6/7/96	**34**	Affidavit of Randolph E. Green, re: filed (lau) [Entry date: 6/6/96]
6/29/96	–	Judge George A. O'Toole, Jr. Endorsed order entered granting [21-1] motion to set aside default. Entered cc/cl (lau)
6/29/96	**24**	Judge George A. O'Toole, Jr., Notice of Hearing/Conference: motion hearing set for 3:00 9/24/96 for [14-1] motion to dismiss. (ctd) [Entry date: 7/30/96]
7/26/96	**26**	Notice of Appeal by Randolph E. Green, Melba L. Green, Craig A. Green et al filed. Fee Status: paid Fee Amount: $105.00 Receipt #: 118179 Appeal record due on 9/24/96 (mmh) [Entry date: 9/20/96]
7/27/96	**25**	Response to Randolph E. Green, Melba L. Green, Craig A. Green in opposition to [14-1] motion to dismiss, filed. (lau) [Entry date: 9/6/96)
7/24/96	–	Motion hearing re: [14-1} motion to dismiss, filed. (lau) [Entry date: 9/6/96]
9/24/96	**27**	Judge George A. O'Toole, Jr., Clerk's Notes: re: motion to dismiss; after arguments, motion taken under advisement; Court Reporter: Ruggieri (lau) [Entry date: 9/25/96]
9/24/96	–	Notice of Docketing Record on Appeal from USCA re: [16-1] appeal, received.

USCA NUMBER: 96-2038 (mmh) [Entry date: 10/3/96]

9/24/96	**33**	Notice of relevant documents in Exhibit D as evidence in material facts showing the intent of Violations, etc., in opposition to the defendants' motion to dismiss by Randolph E. Green, Melba L. Green, Craig A. Green, filed. (lau) [Entry date: 6/6/96]
10/18/96	**28**	Motion by Randolph E. Green, Melba L. Green, Craig A. Green for an order of judgment against the defendants for the total amount that is set forth in the complaint, pursuant to Rule 4(a) of the Federal Rule of Civil Procedure by demand, filed. (lau) [Entry date: 10/23/96]
10/18/96	**29**	Affidavit of Randolph E. Green, Melba L. Green, Craig A. Green, re: [28-1] motion for an order of judgment against the defendants for the total amount that is set forth in the complaint, pursuant to Rule 4(a) of the Federal Rule of Civil Procedure by demand, filed. (lau) [Entry date: 10/23/96]
10/28/96	**30**	Response by City of Boston, Thomas M. Menino, Public Facilities, Charles T. Grisby, Barbara J. Salfity, Dianne Marchiono, John Eade, Richard Beaulieu in opposition to [28-1] motion for an order of judgment against the defendants for the total amount that is set forth in the complaint pursuant to Rule 4(a) of the Federal Rule of Civil Procedure by demand, filed. (lau) [Entry date: 10/29/96]

11/5/96	**31**	Notice of claim of total judgment etc. by demand against the City of Boston et al, defendants pursuant to the Rules of Law, Rule 4 etc. of the federal rule of civil procedure, filed in opposition to plaintiffs motion already filed for total judgment etc. 9/18/96 by Randolph E. Green, Melba L. Green, Craig A. Green, filed. (lau) [Entry date: 11/6/96]
2/3/97	**32**	Mandate of U.S. Court of Appeals re: [26-1] appeal dismissing [26-1] appeal. (mmh) [Entry date: 2/6/97]
6/5/97	**35**	Judge George A. O'Toole, Jr., Memorandum and Order entered, granting [14-1] motion to dismiss and the action is dismissed. Entered cc/cl (lau) [Entry date: 6/6/97]
6/6/97	**36**	Judge George A. O'Toole, Jr., Judgement entered in accordance with the Memorandum and Order dated June 5, 1997, it is ORDERED that the plaintiffs' action be and it is hereby DISMISSED. Entered cc/cl (lau)
6/6/97	–	Case closed. (lau)
7/3/97	**37**	Notice of appeal by Randolph E. Green, Melba L. Green, Craig A. Green filed. Appeal record due on 8/4/97. (mmh) [Entry date: 7/18/97]
7/21/97	–	Notice of Docketing Record on Appeal from USCA re: [37-1] appeal, received. USCA NUMBER: 97-1829. (mmh) [Entry date: 7/24/97]
7/31/97	–	USCA Appeal fees received. Fee Status: Paid Fee Amount: $105.00 Receipt #: 125110 (mmh) [Entry date: 8/1/97]

B-1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 96-10048-GAO

RANDOLPH E. GREEN; MELBA L. GREEN; and CRAIG A. GREEN,
Plaintiffs

V.

THE CITY OF BOSTON; MAYOR THOMAS M. MENINO; PUBLIC FACILITIES DEPARTMENT; CHARLES T. GRIGSBY, Director; BARBARA J. SALFITY, Deputy Director; DIANNE MARCHIONI, Property Manager; INSPECTIONAL SERVICES DEPARTMENT; JOHN EADE, Commissioner; and RICHARD BEAULIEU, Principal Housing Inspector,
Defendants

JUDGMENT

June 6, 1997

O'TOOLE, D. J.

In accordance with the Memorandum and Order dated June 5, 1997, it is ORDERED that the Plaintiffs' action be and it is hereby DISMISSED.

By the Court.

Catherine Dello Russo,
Deputy Clerk

C-1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 96-10048-GAO

RANDOLPH E. GREEN; MELBA L. GREEN; and CRAIG A. GREEN,
Plaintiffs

V.

THE CITY OF BOSTON; MAYOR THOMAS M. MENINO; PUBLIC FACILITIES DEPARTMENT; CHARLES T. GRIGSBY, Director; BARBARA J. SALFITY, Deputy Director; DIANNE MARCHIONI, Property Manager; INSPECTIONAL SERVICES DEPARTMENT; JOHN EADE, Commissioner; and RICHARD BEAULIEU, Principal Housing Inspector,
Defendants

MEMORANDUM AND ORDER

June 5, 1997

O-TOOLE, D.J.

The pro se plaintiffs, Randolph E. Green, Melba L. Green, and Craig A. Green (the "Greens"), filed suit against the City of Boston and various city officials and employees,[1] alleging that the defendants violated the

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[1] The named defendants are Thomas M. Menino (Mayor); Charles T. Grigsby (Director of the Public Facilities Department); Barbara J. Salfity (Deputy Director of the Pubic Facilities Department); the Public Facilities Department itself; Dianne Marchioni (Property

Greens' constitutional and civil rights. Pursuant to Fed. R. Civ. P. 12(b) (6), the defendants have moved for dismissal of all counts for failure to state a claim. For the reasons stated below, the defendants, motion is granted, and the action is dismissed.

The named defendants are Thomas M. Menino (Mayor); Charles T. Grigsby (Director of the Public Facilities Department; Barbara J. Salfity (Deputy Director of the Public Facilities Department); the Public Facilities Department itself; Dianne Marchioni (Property Manager of the Inspectional Services Department); John Eade (Commissioner of the Inspectional Services Department); and Richard Beaulieu (Principal Housing Inspector of the Inspectional Services Department).

I. Background

The facts read in the light most favorable to the plaintiffs are as follows: The plaintiffs were the owners of property at 32 Alaska Street in Roxbury, when in March 1976, the City of Boston filed a tax lien in Massachusetts Land Court to foreclose on the property because the plaintiffs owed back taxes. Their right of redemption was foreclosed by order of final judgment entered by the Land Court in March 1992.

Manager of the Inspectional Services Department); John Eade (Commissioner of the Inspectional Services Department); and Richard Beaulieu (Principal Housing Inspector of the Inspectional Services Department).

Craig Green continued to live at the Alaska Street residence. On July 11, 1994, the defendants attempted to organize a private auction of the premises. In January 1994, the Inspectional Services Department ("Inspectional Services") condemned the property as unfit for human habitation and issued a vacate order. However, Inspectional Services was unable to persuade Craig Green to leave the residence voluntarily, despite its offer to help him apply for relocation assistance. On July 11, 1994, Dianne Marchioni, the property manager of Inspectional Services, sent Craig Green a letter, notifying him that the vacant second and third floors of the residence would be cleaned out by city employees and renewing the Inspectional Services' offer to help him relocate to another apartment. He apparently did not respond to this letter.

On September 29, 1995, after a hearing which included live testimony, the Housing Court issued an order authorizing city employees to enter the premises on October 20, 1995, to remove Craig Green and his possessions if he had not vacated by that date. The order also required the City to move Craig Green's possessions into bonded storage and to pay for three months if storage. Craig Green claims that he was never given notice of the hearing, but the Housing Court explicitly found that he had been notified by failed to appear.

On November 30, 1995 and other subsequent dates, the City took out advertisements in the **Bay State Banner** to try to sell the house. The plaintiffs claim that these advertisements misrepresented the house as being only a two-family house when it is actually a three-family house. The plaintiffs also claim that movers hired by the City removed Craig Green's belongings from Alaska Street on December 9, 1995, but failed to store them at a bonded storage warehouse as required by Housing Court's order.

II. Discussion

A motion to dismiss involves only a limited inquiry. The standard for granting the motion is not the likelihood of success on the merits, but rather, whether the plaintiff is entitled to offer evidence to support his or her claim. **Scheuer v. Rhodes,** 416 U.S. 232, 236 (1974). The plaintiffs contend that the defendants' actions violated their rights under the Fifth and Fourteenth Amendments, as well as under 42 U.S.C. §§ 1981, 1982, 1983, AND 1985.

The plaintiffs have filed other actions relating to these claims. See **Green v. Menino**, No. 94-11805-PBS (D. Mass. May 1, 1995); **Green v. Grigsby**, No. 95-11514-NG (D. Mass. March 6, 1996). In both of these actions, the plaintiffs raised the claim that the alleged auction of the Alaska Street residence violated their constitutional and statutory civil rights. Both of these actions were dismissed on the merits. Because all of the elements of

claim preclusion are present, the plaintiffs are precluded from raising their auction claim here. See **Monarch Life Ins. Co. v. Ropes & Gray**, 65 F.3d 973, 978 (1st Cir. 1995) (Issue preclusion applies where, in both actions, the same issued was resolved, actually litigated, and resolved on the merits in a final judgment, and its resolution was essential to the judgment.).

The plaintiffs' other allegations must also be dismissed for failure to state a claim. The wrongs that the plaintiffs allege are not violations of the plaintiffs' constitutional or federal statutory rights. Because the plaintiffs had lost title and all rights of redemption to the property as of March 1992, they did not have any constitutionally protected right to object to or be notified of the property's sale. **Pearson v. Dodd**, 429 U.S. 396, 399 (1977). Though the plaintiffs claim that Craig Green never received notice of the September hearing, the Housing Court explicitly found that he had. This Court does not have jurisdiction to review findings of fact made by the Housing Court.

Finally, the plaintiffs' remaining allegation – that Craig Green's property was not properly stored in a bonded warehouse as ordered by the Housing Court – does not raise a constitutional or federal civil rights issue. The claimed violation is not that the defendants deprived Craig Green of his property without due process of law, but rather, that they failed to preserve his property. This may state a tort claim under state law,

but it does not arise to the level of a constitutional or civil rights violation.

The plaintiffs have also alleged that they were denied equal protection of the laws because of their race. To support these claims, even at the permissive state of a motion to dismiss, the plaintiffs must provide more than conclusory allegations that their race was the reason for alleged unfairness. **See The Darmouth Review v. Dartmouth College**, 889 F.2d 13, 21 (1st Cir. 1989) (Dismissing § 1981 claims where plaintiffs did not allege any specific facts "which, if proven could plausibly lead to a supportable finding that plaintiffs' race was the reason for the unfairness.") (emphasis in original).

For these reasons, the defendants' motion is granted, and the action is dismissed.

SO ORDERED

_____ _____

DATE DISTRICT JUDGE

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1829

RANDOLPH E. GREEN, ET AL.,
Plaintiffs, Appellants,

v.

CITY OF BOSTON, ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. George A. O'Toole, Jr., U.S. District Judge]

Before
Torruella, Chief Judge,
Stahl and Lynch, Circuit Judges.

Randolph E. Green on brief pro se.
Merita A. Hopkins, Corporation Counsel, and Gerald Fabiano, Assistant Corporation Counsel, City of Boston Law Department, on brief for appellees.

December 19, 1997

Per Curium. Plaintiffs' appeal from a district court judgment dismissing their civil rights complaint for failure to state a claim. Their principal contention on appeal is that the district court erred in setting aside a notice of default, which had been entered when defendants failed to file a timely response to the amended complaint. The setting aside of an entry of default is subject to a "good cause" standard, Fed. R. Civ. P. 55 ©, is reviewable on appeal only for abuse of discretion, and is not to be disturbed "unless the district court's decision is clearly wrong", **McKinnon** v. **Kwong Wah Restaurant**, 83 F. 3d 498, 502 (1st Cir. 1996). The court's action here cannot possibly be so characterized.

The "good cause" standard is a "mutable" one, **Coon** v. **Grenier**, 867 F.2d 73, 76 (1st Cir. 1989), involving a case-specific determination not amenable to any "mechanical formula, "**General Contracting & Trading Co.,** v. **Interpole, Inc.**, 899 F.2d 109, 112 (1st Cir. 1990). We have nonetheless identified some genera guidelines to assist in its application. See, **e.g., McKinnon**, 83 F.3d at 503; **Interpole**, 899 F.2d at 112; **Coon**, 867 F.2d at 76. These criteria overwhelmingly predominate in defendant's favor. For example, there

has been on suggestion but that simple inadvertence was involved here. Plaintiffs have not been prejudiced in any relevant sense. See, **e.g.,** **FDIC** v. **Francisco Inv. Corp.**, 873 F.2d 474, 479 (1st Cir. 1989). The defenses mounted by defendants have proven to be not only potentially but actually meritorious. And defendants acted promptly upon learning of their oversight. Given these circumstances, the district court acted well within its discretion in setting aside the entry of default.

Plaintiffs' remaining contention is that the court discriminated against them in failing to address two of their offerings: their motion to "vacate" defendants' motion to dismiss, and their motion for "order of judgment." To the contrary, the court necessarily if implicitly denied those requests in the course of granting the motion to dismiss.

As plaintiffs have advanced no specific challenge to the holding that their amended complaint failed to state a claim, it suffices to note that we find the district court's reasoning in this regard unexceptionable.

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1829

RANDOLPH E. GREEN, ET AL.,
Plaintiffs-Appellants,

V.

CITY OF BOSTON, ITS AGENTS AND EMPLOYEES, ET AL.,
Defendants-Appellees.

JUDGMENT

Entered: December 19,1997

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:
Phoebe D. Morse, Clerk

By:_____
Chief Deputy Clerk

[cc: Mr. Green and Ms. Hopkins]